

**TESTIMONY OF DONALD SPECTER ON
THE GOVERNOR'S REORGANIZATION PLAN 2:
THE YOUTH AND ADULT CORRECTIONAL SYSTEM**
Little Hoover Commission: January 27, 2005

A. Introduction

I am the Director of the Prison Law Office, a non-profit public interest law firm that provides free legal services to California state prisoners. For almost three decades the Prison Law Office has been protecting the constitutional and statutory rights of California prisoners through advocacy and litigation on behalf of individuals and through class actions. The Prison Law Office has litigated cases on virtually every legal major issue facing the Department of Corrections, the California Youth Authority and the Board of Prison Terms (BPT). At the present time, the Prison Law Office is monitoring and enforcing orders on the conditions at Pelican Bay State Prison, the parole revocation system, the CDC mental health system, the CDC medical care system, the treatment of prisoners with physical and cognitive disabilities in the CDC, all conditions in the California Youth Authority (CYA), the operation of the CDC internal affairs and employee discipline system, and the conditions on Death Row at San Quentin. Through this litigation and advocacy the Prison Law Office has become intimately familiar with the operations of the CDC, the BPT and the CYA.^{1/}

B. The Return of Rehabilitation

2. The comments submitted below are based exclusively on the document transmitted to the Little Hoover Commission by the Governor. Any other material or information that may be available has not been considered.

Once known as a model for rehabilitation, the adult and youth correctional facilities have over the last twenty years steadily been drained of any resources dedicated to that mission. Today our youth and adult correctional facilities do not correct; they do little more than incarcerate, and they do this in a way that harms rather than promotes public safety.

Our youth facilities provide scant rehabilitative services and have over the last few decades been transformed into nothing more than prisons for our children. Some of these youth prisons are very badly run, and, in fact, are worse than some of the better run adult prisons. The CYA is suffering from decades of neglect of their physical facilities and the commitment towards rehabilitative services.

The same is true for our adult prisons. With the notable exception of San Quentin – which, due to the extraordinary efforts of former Warden and now Director Jeannie Woodford, has thousands of community volunteers – our prisons do little or nothing to rehabilitate prisoners so that when they return to society, as virtually all will do, they do not pose a substantial risk to public safety. For years, educational and vocational programs have suffered extreme budget cuts. At the same time, there has been only a meager effort to bring in treatment programs that have proven to be effective in reducing recidivism.

The Reorganization Plan's commitment to rehabilitation is a dramatic and welcome change from the policies of the last few decades. That commitment is illustrated by two aspects of the Plan. First, the name of the agency will be changed to include rehabilitation

in the title.^{1/} Second, the proposed reorganization places a Chief Deputy Secretary in charge of rehabilitative programs on an equal level with the other Chief Deputy Secretary in charge of custodial operations. This approach, which balances rehabilitation with security needs, should be strongly supported by the Commission.

C. Youth Operations

Currently, the CYA is its own department, with a Director who reports to the Secretary of the Youth and Adult Corrections Agency. As it's own department it is completely separate from the CDC. The CYA currently has approximately 3,600 wards, compared to a CDC population of 165,000 prisoners. The CYA's statutory mission is very different from that of the CDC. The CYA is supposed to provide treatment and rehabilitation, while the CDC is supposed to punish prisoners. Compare Welfare and Institutions Code ' 1700 ("community restoration, victim restoration, and offender training and treatment shall be substituted for retributive punishment and shall be directed toward the correction and rehabilitation of young persons who have committed public offenses") with Penal Code ' 1170 (a) ("the purpose of imprisonment for crime is punishment").

The proposed reorganization would place the CYA's operations within the new Department of Corrections and Rehabilitation. Since there are forty-five times as many prisoners as there are wards, the CYA will be swallowed whole by the CDC. This will mean that policies and issues concerning adult prisoners will completely overshadow youth

3. The proposed title of the new agency ("The Department of Corrections and Rehabilitation") should be modified because it is redundant. Corrections and rehabilitation mean the same thing in this context.

issues. More importantly, since the adults will predominate it is almost a foregone conclusion that the two people chosen to run the custodial and program operations as Chief Deputy Secretaries will be from adult corrections. This mixing of adult and juvenile corrections will be disastrous for our incarcerated youth. The trend toward punishing youth will only be further exacerbated. Therefore, consideration should be given to moving the youth authority to another state department or to create a department specifically for juvenile offenders.

If youth are to remain under the new Department of Corrections and Rehabilitation, youth operations must not be under the authority of the Chief Deputy Secretary responsible for custodial operations. To do otherwise will ensure that our youth programs will continue to be run like prisons. Youth services must be placed under the authority of the Chief Deputy Secretary for programs. In well-run youth programs in other states the custodial operations are almost always secondary to rehabilitative and treatment programs. In fact, the experience with other models shows that the need for security is virtually eliminated when youthful offenders are fully engaged in education and other rehabilitative programs.

D. Health Care Operations

Health care is one of the basic necessities of life in prison. At this time, the CDC alone spends close to \$1 billion per year on health care costs. Despite this huge sum, two federal courts have held that prisoners are being subjected to cruel and unusual punishment in violation of the Eighth Amendment to the U.S. Constitution because adequate medical and mental health services are not being provided. In addition, several state audits have

found serious problems with spending practices.

The same sorry state of affairs exists within the CYA. Recent reports by experts hired by the state found that both the medical and mental health programs of that agency were not providing adequate services to wards. The state recently settled a lawsuit that provides court supervision for efforts to improve the CYA's health care system.

Despite the magnitude of the problem, the Reorganization Plan consolidates the health care operations of the CDC and CYA and at the same time fails to give the manager of health care operations the authority that is required. The fact that both the CYA and the CDC are failing to provide adequate care (and in both cases are years away from being close to providing such care) suggests that consolidation itself is a mistake since this will only make management more difficult.

Under the Plan the Division of Health Care Operations will report to the Chief Deputy Director in charge of programs who will then report to the Secretary, presumably through the Undersecretary. The Chief Deputy Director in charge of programs is unlikely to be a clinician or a manager experienced in health care operations.

The other problem is that traditionally health care operations in the CDC have taken a back seat to custodial operations, and been run by ex-wardens or other people who are not trained or experienced in managing complex health care operations. The result has been an abject failure over more than twenty years. Indeed, the reorganization plan devotes just two nondescript sentences to the topic. Until the organization recognizes that health care is a separate and equal division that must be directed by an experienced clinical manager there is little hope that any reform will occur. At the very least, consideration ought to be given to

creating a Chief Deputy Director in charge of health care operations, and the minimum qualifications for that position must include health care management training and experience.

E. Confirmation of Wardens

Under current law the Governor appoints CDC wardens upon recommendation of the Director of the CDC and with the advice and consent of the Senate. (Penal Code ' 6050(a).) The Reorganization Plan will strip the Senate of its power to confirm wardens. The Commission should reject this proposal.

One of the oft-stated goals of this Administration and YACA in particular is to increase transparency and accountability within the corrections system. The public confirmation of wardens by the Senate promotes both goals. Indeed, it is one of the few areas besides the budget where the Senate has any direct influence on the prison system.

The only articulated rationale for this dramatic shift in power is that under the Reorganization Plan the wardens will no longer have as much program responsibility and therefore there is no need for Senate confirmation. However, at the present time the wardens do not have the ability to set policy; that is done by the CDC. Wardens currently are responsible for implementing CDC policy at the local institutions. There will be no change in the new reorganization.

Moreover, this rationale overlooks entirely the fact that wardens will still be running very large, complex and expensive organizations in our local communities. The Legislature, through the Senate, should retain some control over the individuals who are going to be

running our state prisons.

Nor will there be any change in the ability of the Secretary to hold the wardens accountable. Current law provides that upon confirmation the Director of the CDC retains the final decision to remove a warden without following the procedures of the civil service system. (Penal Code ' 6050(a).) The Secretary of the new department will retain this authority. Thus, there is nothing in the reorganization that suggests a need to change the procedure for appointing and confirming wardens.